

Application No. 10/669,287
Reply dated December 29, 2004
Reply to Office Action of June 29, 2004

application includes claims 116-181 that were restricted out of the '458 patent as being claims drawn to non-elected species V, Figs. 22A, 22B, and 23.

The Examiner rejected claims 1-72, 74-76, and 84-87 as rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,117,174 to Nolan. Independent claim 1 recites a push-in interbody spinal fusion implant having upper and lower members with arcuate portions that in a first position, which allows for "a collapsed implant height during insertion of said implant into the spine," are angled to one another over a substantial portion of the length of the implant. Nolan teaches a spinal implant that is substantially cylindrically-shaped when inserted between two adjacent vertebrae. (See Nolan, col. 2, lines 60-61). Nolan teaches that the widths (i.e., heights) of each end may be different, but in a collapsed position the implant widths (i.e., heights) are the same because of the use of a clip C. (See, Nolan col. 5, lines 15-21). Nolan does not teach that the arcuate portions of the upper and lower members in the first position, which allows for a collapsed implant height, are angled to one another over a substantial portion of the length of the implant. Indeed, Nolan explicitly teaches away from an implant having upper and lower portions that are angled with respect to one another during insertion of the implant into the spine. (See, e.g., Nolan, col. 1, lines 38-42).

The Examiner rejected claims 73 and 88 under 35 U.S.C. § 103(a) as being unpatentable over Nolan in view of U.S. Patent No. 4,961,740 to Ray et al.; and rejected claims 77-83 and 89-96 under 35 U.S.C. § 103(a) as being unpatentable over Nolan. Applicant submits that the rejections over claims 73, 77-83, and 88-96 are rendered moot at least because they depend from an allowable independent claim, or claims dependent therefrom.

Applicant submits independent claim 1 is allowable and that dependent claims 2-96 are allowable at least because they depend directly or indirectly from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding

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rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted,

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